

Document: Proposed Rule, **Register Page Number:** 28 IR 3328
Source: August 1, 2005, Indiana Register, Volume 28, Number 11

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register.

**TITLE 25 INDIANA DEPARTMENT OF
ADMINISTRATION**

Proposed Rule
LSA Document #05-123

DIGEST

Adds 25 IAC 6 to establish rules regulating the registration of executive branch lobbyists. Effective 30 days after filing with the secretary of state.

25 IAC 6

SECTION 1. 25 IAC 6 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6. EXECUTIVE BRANCH LOBBYISTS

Rule 1. Definitions

25 IAC 6-1-1 Definitions

Authority: IC 4-13-1-4.2

Affected: IC 4-2-6-1; IC 4-21.5-2-4; IC 4-21.5-2-6; IC 4-22-2-3; IC 5-16; IC 8-23; IC 20-12-0.5-1

Sec. 1. The following definitions apply throughout this article:

- (1) "Agency" has the meaning set forth in IC 4-2-6-1.
- (2) "Business relationship" means any of the following:
 - (A) A relationship defined in IC 4-2-6-1.
 - (B) A registered executive branch lobbyist.
 - (C) A person who is engaged in executive branch lobbying without having filed a registration statement required by 25 IAC 6-2-1.
- (3) "Communication" means the exchange of any thoughts, messages, or information by:
 - (A) contact in person;
 - (B) telephone;
 - (C) letter;
 - (D) telegraph;
 - (E) facsimile;
 - (F) electronic mail;
 - (G) text messaging; or
 - (H) any other form of electronic transmission of information.
- (4) "Department" means the Indiana department of administration.
- (5) "Employer" means the person that principally employs the executive branch lobbyist. The term does not include an organization that only retains or contracts with an executive branch lobbyist and does not directly employ that executive branch lobbyist.
- (6) "Engage" or "engagement" means any arrangement whereby a person receives economic consideration, in the form of salary, retainer, compensation, or other fee, for or on behalf of any employer or real party in interest to:
 - (A) influence an executive branch action; or
 - (B) conduct any executive branch lobbying activity.
- (7) "Executive branch action" means a decision of an agency regarding either of the following:
 - (A) The expenditure of state funds with respect to the award of:
 - (i) a contract;
 - (ii) a lease; or

(iii) any other financial arrangement;
under which such funds are distributed or allocated.

(B) The:

- (i) proposal;
- (ii) drafting;
- (iii) development;
- (iv) consideration;
- (v) promulgation;
- (vi) amendment;
- (vii) repeal; or
- (viii) rejection;

by any agency of a rule as defined by IC 4-22-2-3(b).

(8) "Executive branch lobbying activity" means action or communication made to promote, oppose, or otherwise influence the outcome of an executive branch action. The term does not include any of the following:

(A) The application or negotiation of an award for any state or federal grant.

(B) The resolution of any outstanding tax matter, including:

- (i) audits;
- (ii) administrative appeals;
- (iii) claims for refund; or
- (iv) collection activity;

with the department of state revenue.

(C) Communication regarding the award of incentives related to an economic development project negotiated by the Indiana economic development corporation.

(D) Paid advertising communications that are disseminated to the public by any of the following:

- (i) Radio.
- (ii) Television.
- (iii) A newspaper or periodical of general circulation.

(E) Addresses to audiences of more than twenty-five (25) agency employees, officers, or special state appointees that are open to the public.

(F) Public or private testimony or communications solicited by an agency for the sole purpose of formulating public policy. The agency soliciting testimony or communications must keep written documentation for a period of four (4) years detailing with particularity the public policy purpose for extending each such invitation.

(9) "Executive branch lobbyist" means any person who is employed and receives payment, or who contracts for economic consideration, exceeding one thousand dollars (\$1,000) in any registration year, for the purpose of engaging in executive branch lobbying activity. The term does not include any of the following:

(A) An elected or appointed officer, employee, or special state appointee of a federal or state agency, the judicial department of state government, the legislative department of state government, a state educational institution (as defined in IC 20-12-0.5-1), or a political subdivision who attempts to influence an executive branch action that is within the scope of employment.

(B) An attorney or any other person who represents a client in any proceeding conducted under IC 4-21.5, in a comparable proceeding conducted by an agency exempted by IC 4-21.5-2-4, or in a proceeding described in IC 4-21.5-2-6.

(C) A person who represents a religious organization for the purpose of protecting the organization's constitutional rights.

(D) Any newspaper or other periodical of general circulation, book publisher, news wire service, or radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical or radio or television station) that in the ordinary course of business publishes news items, editorials, or other comments or paid advertisement that directly or indirectly urge agency action if such newspaper, periodical, book publisher, radio or television station, or individual engages in no further or other activities in connection with agency actions.

(E) A person whose communication with an agency is for the sole purpose of gathering information that is contained in a public record done under and in full compliance with:

- (i) IC 5-16 (state public works);
- (ii) IC 5-22 (public procurement); or
- (iii) IC 8-23 (Indiana department of transportation highway contracts).

(F) A person acting:

- (i) on his or her own behalf; or

(ii) under Article 1, Section 31 of the Constitution of the State of Indiana; who assembles together with other persons for the common good or petitions an agency for redress of grievances.

(10) "Financial arrangement" means the purchase or acquisition of any:

- (A) property;
- (B) interest in property;
- (C) service; or
- (D) other asset;

of an agency valued in excess ten thousand dollars (\$10,000).

(11) "Person" means any:

- (A) individual;
- (B) proprietorship;
- (C) partnership;
- (D) unincorporated association;
- (E) trust;
- (F) business trust;
- (G) group;
- (H) limited liability company; or
- (I) corporation;

whether or not operated for profit, or a governmental agency or political subdivision.

(12) "Real party in interest" means the person on whose behalf the executive branch lobbyist is acting, if that person is not the employer.

(Indiana Department of Administration; 25 IAC 6-1-1)

Rule 2. Registration Requirements

25 IAC 6-2-1 Initial registration statement

Authority: IC 4-13-1-4.2

Affected: IC 4-13-1-4.2

Sec. 1. Before making any contact with an agency regarding an executive branch action, an executive branch lobbyist shall file with the department a signed initial registration statement on a form approved by the commissioner, which shall include the following information:

- (1) The name, business address, telephone number, electronic mail address, and occupation of the executive branch lobbyist.**
- (2) The name, business address, telephone number, and electronic mail address of the:**
 - (A) executive branch lobbyist's employer; and**
 - (B) real party in interest on whose behalf the executive branch lobbyist is acting, if it is different from the employer.**
- (3) A statement of the total payments contemplated by the executive branch lobbyist's engagement, including:**
 - (A) salary;**
 - (B) retainer;**
 - (C) fees;**
 - (D) reimbursement of expenses; and**
 - (E) other compensation;****to be provided for any executive branch lobbying activity.**
- (4) A brief description of the subject matter to which the engagement relates.**
- (5) The identity of the agency or agencies to which the engagement relates.**

(Indiana Department of Administration; 25 IAC 6-2-1)

25 IAC 6-2-2 Annual registration reports

Authority: IC 4-13-1-4.2

Affected: IC 4-2-6

Sec. 2. (a) In addition to filing an initial registration statement under section 1 of this rule, an executive branch lobbyist shall file with the department not later than the last business day of December of each year a signed annual registration report on a form approved by the commissioner, which shall include the following information:

- (1) The name, business address, telephone number, electronic mail address, and occupation of the executive branch lobbyist.
- (2) The name, business address, telephone number, and electronic mail address of the executive branch lobbyist's principal employer.
- (3) The name, business address, and electronic mail address of each real party in interest represented by the executive branch lobbyist that has a continuing engagement described in the initial registration statement filed by the executive branch lobbyist.
- (4) The total amount of payments received for all executive branch lobbying activities during the past year.
- (5) A brief description of the subject matter for the executive branch lobbying activities in which the executive branch lobbyist was engaged during the past year.
- (6) The identity of the agency or agencies to which the executive branch lobbying activities during the past year were directed.

(b) With each annual registration report, an executive branch lobbyist must file a verified statement approved by the office of the inspector general certifying that in the course of engaging in any executive branch lobbying activity, the executive branch lobbyist has read and complied with the following:

- (1) The state ethics statutes set forth in IC 4-2-6.
- (2) The rules promulgated by the state ethics commission at 40 IAC.

(Indiana Department of Administration; 25 IAC 6-2-2)

25 IAC 6-2-3 Amendments; changes in information; notice of termination

Authority: IC 4-13-1-4.2

Affected: IC 4-13-1-4.2

Sec. 3. (a) If a material change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed with the department within fifteen (15) days after the change.

(b) Each registered executive branch lobbyist shall file a notice of termination with the department within fifteen (15) days after ceasing the activity that required registration; however, this does not relieve the executive branch lobbyist of the reporting requirements of section 2 of this rule. *(Indiana Department of Administration; 25 IAC 6-2-3)*

Rule 3. Duties of the Commissioner

25 IAC 6-3-1 Duties of the commissioner

Authority: IC 4-13-1-4.2

Affected: IC 5-14-3

Sec. 1. (a) The commissioner shall:

- (1) prescribe forms for the:
 - (A) initial registration statements;
 - (B) annual registration statements;
 - (C) termination reports; and
 - (D) other documents;

required to be filed under this article; and

- (2) make the forms available to persons required to file those forms.

(b) In cooperation with the inspector general, the commissioner shall:

- (1) adopt a form for the statement to be filed under 25 IAC 6-2-2(b); and
- (2) include such form in materials made available to persons required to file a registration statement.

(c) The commissioner shall:

- (1) prepare and publish instructions setting forth recommended, uniform methods of reporting for use by persons required to file statements and reports under this article; and
- (2) make such instructions available on the department's Web site.

(d) The commissioner shall be responsible for notifying executive branch lobbyists of deficiencies, inadequacies, and delinquencies in registration statements and reports filed with the department.

(e) The commissioner shall compile and maintain an index of all reports and statements filed with the commissioner under this article to facilitate public access to these reports and statements.

(f) The commissioner may audit the accuracy of registration statements or other documents filed under this rule by requiring the registrant to submit verified statements and other supporting documentation. Disclosure of such documents shall be subject to IC 5-14-3 and the exceptions and exemptions contained therein.

(g) The commissioner shall notify an executive branch lobbyist of any violations or errors discovered during an audit. The executive branch lobbyist shall within thirty (30) days from receipt of the notification file an amended statement meeting all requirements set forth in this article. If no amended statement is filed within thirty (30) days of receipt of the notification, or if an amended statement does not adequately address the deficiencies discovered during the audit, the commissioner may:

- (1) refer the file to the office of the inspector general; and
- (2) deem the executive branch lobbyist unregistered until an appropriate amendment is filed.

(h) The department shall preserve statements and reports filed under this article for a period of four (4) years from the date of receipt. (*Indiana Department of Administration; 25 IAC 6-3-1*)

Rule 4. Prohibitions

25 IAC 6-4-1 Persons barred from executive branch lobbying

Authority: IC 4-13-1-4.2

Affected: IC 4-13-1-4.2

Sec. 1. The following persons may not be registered as an executive branch lobbyist and are prohibited from engaging in executive agency lobbying under this article:

- (1) Any individual convicted of a felony for violating any law while the individual was an officer or employee of any agency or political subdivision.
- (2) Any person convicted of a felony relating to executive branch lobbying.
- (3) Any person convicted of a felony who:
 - (A) is in prison;
 - (B) is on probation; or
 - (C) has been in prison or on probation within the past twelve (12) months.
- (4) Any person:
 - (A) whose statement or report required to be filed under this article was found to be materially incorrect; and
 - (B) who has not filed an amended statement or report within thirty (30) days after having been notified under 25 IAC 6-3-1(f).

(*Indiana Department of Administration; 25 IAC 6-4-1*)

Rule 5. Enforcement

25 IAC 6-5-1 Enforcement

Authority: IC 4-13-1-4.2

Affected: IC 4-13-1-4.2

Sec. 1. (a) The commissioner shall take all steps allowed by applicable law to enforce these rules.

(b) The office of the inspector general shall receive complaints concerning unlawful executive branch lobbying activity, violations of the executive branch lobbying rules, or violations of state ethics rules committed by:

- (1) registered executive branch lobbyists; or
- (2) unlawful executive branch lobbyist activity.

(c) Complaints alleging unlawful executive branch lobbying activity, violations of the executive branch lobbying rules, or

violations of state ethics rules may be filed with the office of the inspector general by:

- (1) the department;
- (2) any appointing authority of an agency; or
- (3) any person.

(Indiana Department of Administration; 25 IAC 6-5-1)

Rule 6. Severability

25 IAC 6-6-1 Severability

Authority: IC 4-13-1-4.2

Affected: IC 4-13-1-4.2

Sec. 1. If any provision of this article as now or later amended, or its application to any person or circumstance, is held invalid, the invalidity shall not affect other provisions that can be given effect without the invalid provision or application.

(Indiana Department of Administration; 25 IAC 6-6-1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 23, 2005 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Indiana Department of Administration will hold a public hearing on proposed new rules relating to the registration of executive branch lobbyists.

The Department of Administration is required to adopt these rules by Indiana Code 4-13-1-4.2. The economic impact on persons subject to these rules is the time involved in filling out and returning the required statements.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W479 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Susan W. Gard
General Counsel and Deputy Commissioner
Indiana Department of Administration